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VIA ECF

The Honorable John F. Murphy
United States District Court for the
Eastern District of Pennsylvania
3809 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Re: Kitchens v. National Board of Medical Examiners, No. 22-3301

Dear Judge Murphy:

We are writing on behalf of the National Board of Medical Examiners (“NBME”) in response to the letter filed by Dr. Kitchens on May 22, 2023 (Dkt. 72).

It is NBME’s understanding that Dr. Kitchens is seeking an expedited partial ruling on whether he is entitled to accommodations on a future administration of the USMLE—i.e., whether he has shown that he is disabled within the meaning of the ADA and, if so, whether he has further shown that he needs double testing time in order to take the USMLE in an accessible manner. It is also NBME’s understanding that Dr. Kitchens (1) is proposing that any issues relating to score expungement as a remedy would be deferred for later, non-expedited adjudication; and (2) is not seeking an alteration of the existing briefing schedule, but solely a more expeditious partial ruling from the Court after briefing has concluded. NBME attempted, without complete success, to confirm these understandings with Dr. Kitchens before submitting this response. *See* Ex. A.

To be clear, NBME opposes any truncation of the current briefing schedule, which is already compressed. *See* May 18, 2023 Order (Dkt. 71). As the Court is aware, the briefing schedule requires NBME to make the first filing on proposed findings of fact and conclusions of law by June 15, 2023. There has been a three-day delay in obtaining the trial transcript because Dr. Kitchens did not promptly respond to the court reporter’s email of May 19 setting forth the estimated costs of a 14-day or 30-day transcript and asking for the parties’ preferences (Dr. Kitchens responded on Monday, May 22). *See* Ex. B. The court reporter has confirmed that the transcript will be provided on June 5, meaning that NBME has only 10 calendar days to review the transcript to prepare its proposed findings of fact and conclusions of law, which is the first submission called for in the Court’s briefing schedule. Dr. Kitchens then has three additional weeks to prepare his proposed findings of fact and conclusions of law in response to NBME’s submission, and only two weeks are allotted for NBME to prepare its response to Dr. Kitchens’s

The Honorable John F. Murphy
May 25, 2023

submission. Thus, the deadlines in the current briefing schedule for NBME's submissions are already aggressive. Dr. Kitchens then has another two weeks to file a surreply, and NBME takes no position on whether Dr. Kitchens would like to submit that filing earlier to facilitate an earlier ruling by the Court.

NBME would also oppose any expedited briefing or treatment of the score expungement issue that would vary the structure set out in the Court's May 18 Order, including the possibility of additional briefing if necessary as noted in footnote 4.

NBME defers to the Court on whether to expedite a partial ruling, after briefing has concluded, on whether Dr. Kitchens is entitled to accommodations on a future administration of the USMLE. NBME notes the following, however, with respect to certain statements made in Dr. Kitchens's letter relating to the timing of his residency applications.

Dr. Kitchens does not provide any support for his statement that if he is "unable to take the STEP exams until the middle of the fall, it will result in residency programs overlooking [his] application entirely;" and his statement that "[r]esidency programs begin reviewing applications starting in September 2023" is vague. It appears that residency programs begin reviewing applications at the *end* of September or early October, at the earliest. *See* <https://www.nrmp.org/wp-content/uploads/2022/06/2023-Main-Residency-Match-Detailed-Calendar-FINAL.pdf> (2023 Match schedule; a 2024 schedule does not appear to be published yet) (*see* Ex. C); <https://students-residents.aamc.org/eras-tools-and-worksheets-residency-applicants/eras-2024-residency-timeline-international-medical-graduates-img> (ERAS 2024 Residency Timeline for IMGs) (*see* Ex. D).

The briefing schedule and expected timeline announced by the Court immediately following the bench trial presumably reflected the Court's own consideration of the issues raised in this case and the Court's schedule relative to the time needed to address those issues. NBME respectfully requests that the existing briefing schedule remain in place, and it defers to the Court on the requisite timing for any decision it issues following the conclusion of briefing.

Respectfully submitted,

/s/ Caroline M. Mew

Caroline M. Mew

cc: Marcus Kitchens, Jr. (via email and ECF)
Jared Bayer (via ECF)